IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 511 of 1998

Between:

M/s Sri Kanka Durga Metal Industry, Rep: by its Prop, S.Venkateswara Rao.
RTC Complex Road, Thadithota,
Rajamundry, East Godavari Dist.

..... PETITIONER

AND

1 The Commissioner of Lobour
Andhra Pradesh, Hyderabad.
2 The Asst. Commissioner of Labour,
Rajamundry, East Godavari Dist.
3 The Asst. Labour Office, II circle,
Rajamundry, East Godavari Dist.
4 L.Gurumurthy Being Minor rep bu father name not known.
Thadithota, Rajamundry Dist.
R4 dismissed as per default as per court dated.4/9/01
5 K.Appa Rao Being Minor rep bu father name not known.
R/o Thadithota, Rajamundry Dist.
R5 is dismissed as default per court order dated 4/9/01.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the demand notice issued by the 3rd respondent in Rc.No.E/2936/97, DATED.13.6.97 and the consequential impugned order dared.20.10.97 in. Rc.No.E/2936/97 of the 2nd respondent as highly illegal, arbitrary, unjust, improper and consequential direct the respondent 1to 3 to drop all the further proceedings in this regard and to pass.

Counsel for the Petitioner:MR.BADANA.BHASKARA RAO

Counsel for the Respondent No.: GP FOR LABOUR

The Court made the following :

ORDER:

This writ petition is filed seeking a declaration that the demand notice dated 13.06.1997, issued by respondent No.3, and the consequential orders dated 25.10.1997, passed by respondent No.2 dated 20.10.1997, imposing fine of Rs.20,000/- against the petitioner for engaging children in an hazardous industry, as illegal, arbitrary and contrary to law.

The facts in brief, which lead to filing of the present writ petition are - the petitioner is a small-scale industry. It is engaged in the manufacture of vessels out of ingots purchased from the primary industries. While so, an inspection of the petitioner's factory premises was alleged to have been conducted on 2-5-1997, and based on the alleged inspection report, which found the petitioner to have employed children, respondent No.3 issued demand notice dated 13-6-1997 alleging that the petitioner engaged child labour in the manufacturing of vessels, which is hazardous and is prohibited under the Child Labour (Prohibition and Regulation) Act, 1986, and called upon the petitioner to pay Rs.40,000/- per child. The petitioner submitted a reply to respondent No.3 stating that the alleged children were in no way connected to it, and were not engaged by the petitioner. Having not satisfied with the reply, an enquiry was conducted, and not satisfied with the stand taken by the petitioner in the enquiry, respondent No.2 passed the impugned order dated 20-10-1997, confirming the demand notice issued by respondent No.3. Assailing this order, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Labour and Employment.

The learned counsel for the petitioner submitted that the petitioner is a non-hazardous industry, and respondent No.2 without affording any reasonable opportunity and without considering the facts of the matter, in an inductive and biased manner, passed the impugned order, which is illegal and unjust. He further contended that before issuing the impugned demand notice and the consequential impugned order, no reasonable opportunity of hearing was afforded to the petitioner to put forth their case during the enquiry. The impugned demand notice, and the consequential orders, are the result of an alleged enquiry, conducted behind the back of the petitioner and without any notice, and further no report of the enquiry was furnished to the petitioner. He submitted that since the petitioner is not an hazardous industry, the rigor of the judgment of the Apex Court in W.P. No. 465 of 1986, which dealt with elimination of child labour in hazardous factories and industries, cannot be applied to the case of the petitioner, and as such, the action of respondent No.3 in issuing demand notice, demanding the petitioner to deposit a sum of Rs.40,000/- as penalty, which was confirmed by the consequential orders of respondent No.2, are illegal and unjust, and as such, are liable to be quashed and set aside.

A counter affidavit is filed on behalf of the respondents denying the writ

averments. The learned Government Pleader for Labour and Employment reiterating the counter averments submitted that that the petitioner is a metal industry, which is hazardous establishment, and that during the course of inspection, children below the age of 14 years were found working, and their particulars such as name, age and address were noted down and the signature of the employer was obtained. He further contended that the petitioner is engaged in the business of manufacturing vessels out of ingots purchased from the primary industries and moulding which is considered to be a hazardous process and having regard to the fact that the petitioner employed child labour in his industry, which is prohibited by the Child Labour (Prohibition & Regulation) Act, 1986 and the judgment of the apex Court in W.P. (Civil) No. 465 of 1986, respondent No.3 upon an inspection report, issued the demand notice imposing penalty of Rs.40,000/-, which was confirmed by respondent No.2, and no exception can be taken thereto. He submitted that before passing the impugned order, ample opportunity was afforded, but the petitioner did not raise any objection and kept silent.

While admitting the writ petition, this Court by order dated 6-1-1998 granted a conditional interim order suspending the impugned order on condition of petitioner depositing Rs.10,000/- by 31-1-1998.

A perusal of the impugned order, would reveal that pursuant to an inspection of the petitioner's industry on 2-5-1997, wherein it was found that the petitioner engaged a child, a demand notice dated 13-6-1997 was issued by respondent No.3 to the petitioner to deposit an amount of Rs.40,000/- and thereafter, considering the objections filed by the petitioner, an enquiry was conducted, respondent No.2 passed the impugned proceedings dated 20-10-1997, confirming the demand notice issued by respondent No.3, directing the petitioner to deposit Rs.40,000/- for engaging a child.

Though the petitioner contends that the petitioner has not engaged the child labour and no opportunity was afforded before passing the impugned order, the fact remains that at the time of conducting inspection, it is stated that the petitioner was present, and during the course of inspection, he having found the petitioner engaged child labour, noted the names of the child labour, their age, sex, level of literacy, the date from which they have been employed, the hours of work and their monthly income, and it is stated that the thumb impressions of the child labour and the signature of the petitioner, were also taken. This shows that the petitioner has engaged child labour in his industry, and having regard to the fact that engaging of child labour in hazardous factories and industries, is prohibited under the Child Labour (Prohibition & Regulation) Act, 1986, no exception can be taken to the demand notice issued by respondent No.3, which stood confirmed by the impugned proceedings issued by respondent No.2.

Under Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986, whoever employs any child or permits any child to work in contravention of the provisions of Section 3 is punishable with imprisonment for a term not less than three months and not more than one year or with fine of not less than ten thousand rupees, which may extend to twenty thousand rupees or with both. However, having

regard to the facts and circumstances of the case, I am of the considered opinion that the ends of justice would be met, if the writ petition is disposed of reducing the penalty imposed and demanded in the impugned notice and the consequential order from Rs.40,000/- (Rs. 20,000/- for each child labour engaged) to minimum fine amount under the Child Labour (Prohibition & Regulation) Act, 1986 i.e., Rs.10,000/- each.

Accordingly, the writ petition is disposed of reducing the penalty imposed and demanded in the demand notice dated
13-6-1997, issued by respondent No.3, and the consequential impugned order dated 23-10-1997, issued by respondent No.2, confirming the demand notice, from Rs. 20,000/- to Rs.10,000/-each.
No costs.

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N.V.RAMANA,J

23-3-2005
tvk

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Lobour
Andhra Pradesh, Hyderabad.
2 The Asst. Commissioner of Labour,
Rajamundry, East Godavari Dist.
3 The Asst. Labour Office, II circle,
Rajamundry, East Godavari Dist.

4) 2 CD copies

5) 1 CC to MR.BHASKARA RAO